IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 558 OF 2006
IN
WRIT PETITION NO. 2025 OF 2004

Appa Pada Rahivashi Seva Sangh ...Petitioner

Versus

State of Maharashtra and others ... Respondents

and

The Commissioner of Police and others .. Respondents

Mr. A.Y. Sakhare, Senior Advocate, instructed by M/s. Yasmin Bhansali & Co., for respondent No.5, in support.

Mr. C.U. Singh, Senior Advocate, with Ms. Soma Singh, instructed by M/s. Sanjay Udeshi & Co., for the petitioner to show cause.

Mr. K.R. Belosay, Government Pleader, for respondent Nos. 1 to 4, 6, 7, 10 and 11 to show cause.

Mr. S.G. Surana for respondent Nos. 8 and 9 to show cause.

CORAM: **J.N. PATEL, Ag. C.J.,** &
S.C. DHARMADHIKARI, J.

DATE: **MARCH 29, 2007**.

P.C.

Heard learned counsel for the parties.

2. This Notice of Motion is taken out by original respondent No.5 seeking an order of this Court in the form of direction to respondent Nos. 8 to 12 to shift those eligible slum dwellers to the permanent alternative accommodation and/or temporary accommodation shown in red colour in the plan at Exhibit-17 to the affidavit in support of the Motion under Regulation 33 (10) for *in situ* slum dwellers and other reliefs like removal of unauthorised occupants from the subject land by exercising powers under Section 33 of the Maharashtra Slum Areas (Improvement, Clearance and Redevelopment) Act, 1971, shifting of those slum dwellers who come in the way of laying water main, storm water drain, sewerage line and drainage line and water distribution, and so on.

3. This Court, on 22nd March, 2007, directed the Government Pleader to keep the Officers personally present in Court and have filed their affidavits. From the affidavit of Mr. Pandurang N. Munde, Conservator of Forests and Director, Sanjay Gandhi National Park, Borivli (East), this Court found that the builder has not been able to keep up its commitment or make the number of tenements available as per schedule, and has moved this Court with all sorts of grievances in order to seek certain directions against the authority. The Conservator of

Forests, along with his affidavit, annexed a communication dated 21st March, 2007, received from the office of the Slum Rehabilitation Authority, requesting him to arrange for taking possession of the tenements as made available by the developer, M/s. Sumer Corporation, and also to take further necessary action for shifting rehabilitation of eligible slum dwellers of Sanjay Gandhi National Park, Borivli, in the aforesaid rehabilitation tenements, in compliance with the directions given by this Court in an earlier Notice of Motion No. 503 of 2005 in Writ Petition No. 2025 of 2004. Accordingly, Mr. Munde, Conservator of Forests, has asssured this Court in paragraph 6 of his affidavit-in-reply that he would take the necessary steps.

4. We accept the affidavit filed by Shri Munde, Conservator of Forests, insofar as the implementation of the Scheme of Rehabilitation is concerned as an undertaking to this Court. It should not be misconstrued, that the Court has extended the time frame it had earlier prescribed when the petition was disposed of and subsequently extended at the instance of one party or the other.

5. An affidavit-in-reply is also filed by Mr. Debashish Chakraborty, the Chief Executive Officer of Slum Rehabilitation

Authority. He has also referred to the order passed by this Court on 4th May, 2006, and also annexed a notification under which the Governmment of Maharashtra has appointed the Conservator of Forests and Director,Sanjay Gandhi National Park, Borivli, to be the Competent Authority for the purposes of the said Act for the areas comprising all lands in Sanjay Gandhi National Park, Borivli. It means that he no more carries the responsibility of resolving the rehabilitation of encroachers within Sanjay Gandhi National Park, Borivli, which is notified as a National Park under the Wildlife (Protection) Act, 1972.

6. What we find from the submissions made before us is that for the present, 4142 tenements are made available to the Conservator of Forests for rehabilitation of encroachers in the National Park and 1772 tenements would be further available within four months' time.

7. The grievance of respondent No.5 i.e. Sumer Corporation is non-co-operation on the part of the authorities in enabling them to construct the tenements.

8. The learned Government Pleader has placed before us an order dated 28th March, 2007, issued by the Revenue and Forests

Department of the Government of Maharashtra. Under the said Government order, the Government of Maharashtra has constituted a Coordination Committee consisting of (i) Dr. P.N. Mundhe, Director and Conservator of Forests, Sanjay Gandhi National Park, Borivli, (ii) Mr. Udan, Additional Collector, Mumbai Suburban District, and (iii) representative of Niwara Haq Samiti, to monitor the actual rehabilitation process.

9. This Court makes it clear that in view of the fact that the Government of Maharashtra had appointed a Coordination Committee for the said purpose, which includes all the concerned authorities, there is no need on the part of this Court to issue any directions, except for seeking compliance of its orders. The learned Government Pleader makes a statement to this Court that by 31st December, 2007, all encroachments within Sanjay Gandhi National Park, Borivali (East), would be removed and eligible encroachers rehabilitated. We accept the statement as an undertaking given on behalf of the Government of Maharashtra; and we make it clear that if the Coordination Committee fails to comply with this undertaking, this Court would initiate appropriate action by invoking Article 215 of the Constitution of India and provisions of the Contempt of Courts Act against respondent Nos. 1 and 2.

10. We further make it clear that insofar as M/s. Sumer Corporation is concerned, it would first construct tenements in order to rehabilitate eligible encroachers from Sanjay Gandhi National Park, Borivali, as identified and found to be so by Mr. Munde, Director and Conservator of Forests, Sanjay Gandhi National Park, Borivli, who has now been vested with the authority of the Chief Executive Officer for the areas comprising all lands in Sanjay Gandhi National Park, Borivali (East), under the Slum Rehabilitation Act.

11. Insofar as the difficulty faced by Sumer Corporation in constructing additional tenements i.e. the assistance required by them from the Additional Collector, Mumbai Suburban District, is concerned, the Additional Collector, Mumbai Suburban District, would extend all possible assistance to Sumer Corporation in the matter, so as to comply with the deadline. We expect the parties to complete the project of rehabilitation in terms of the undertaking given by the Government of Maharashtra to this Court and no further extension of time would be granted by this Court.

12. We propose to remove all encroachers including eligible

encroachers from the forest areas by issuing specific orders and directions to the State Government, irrespective of the fact whether they have been rehabilitated or not. What we find is that the parties have failed to comply with the deadline initially set by this Court and approved by the Hon'ble Supreme Court of India. This action will have to be taken, in addition to proceeding against the authorities who are responsible for completion of the project.

13. Insofar as Sumer Corporation is concerned, their contract would stand terminated, if they are not able to construct tenements and make them available to the Coordination Committee within the stipulated period.

14. Our order puts all concerned on notice. Needless to say that Deputy Commissioner of Police of the Zone concerned would make sufficient police force available to Mr. Munde, Director and Conservator of Forests, Sanjay Gandhi National Park, Borivli (East), on demand, for enabling him to comply with our order and execute the work assigned to him under the Slum Rehabilitation Act insofar as removal of encroachment and rehabilitation of eligible encroachers are concerned.

15. The Notice of Motion is accordingly disposed of.

16. The matter be listed before this Court, for ascertaining the progress in compliance of our directions and orders passed from time to time, initially on 4th May, 2007.

ACTING CHIEF JUSTICE

S.C. DHARMADHIKARI, J.